IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.439/99

S.C. Patni & Ors.

Versus

Asstt. Collector [Prosecution] Central Excise & Customs, Jaipur

DATE OF ORDER :: 09/08/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. P.K. Kasliwal, for petitioners
None present for respondents

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Instant petition is directed against the order dated 16th January, 1999 whereby learned trial Judge took cognizance against petitioners u/s.9(i)(ii) of Central Excise Salt Act, 1944.

Facts giving rise to the present case are that petitioners are running business in the name of M/s. Kothari Plastic Industries and they are partners in the said firm. Authorized Officer of the department visited their Factory on 23rd July, 1983 and on physical verification of the stock, it revealed to him that there is some concealment of excise duty and accordingly, an offence has been committed by them u/ss. 9(1)(B) & 9(1)(ii) read with Section 9AA of Act, 1944. On such complaint, case was registered and statements u/ss.200 & 202 Cr.P.C. were recorded and the learned trial Judge took cognizance against accused-petitioners vide order dated 16th January,

1999. It has come on record that the proceedings, which were initiated against them by the department, went up to the Tribunal and vide order dated 12th March, 1991, the matter was remanded back with certain observations to the Assessing Authority to examine the matter afresh and decide the same in accordance with law. In terms of order of Tribunal, the Assessing Authority adjudicated the matter afresh and passed order on 28th September, 1998 and found duty amount of Rs.83/- which was required to be deposited by them. After passing of final order by the Assessing Authority in which it was observed that they are entitled to deposit the duty amount of Rs.83/-., application u/s.245(2) Cr.P.C. was filed by petitioners before learned trial Judge on 5th November, 1998 for dropping the proceedings in the light of order passed by Assessing Authority and so also the guidelines issued by the Board dated 26th July, 1990 where it was observed that if there is evasion of tax which is less than Rs.10,000/-, the prosecution should not be launched against assessee. Learned trial Judge after giving reference to the circular and so also the order of Assessing Authority by which the tax liability of Rs.83/- was imposed upon the assessee, recorded finding that this will not absolve the petitioners from criminal prosecution since it is independent proceedings and the order, of which reference has been made by Assessing Authority and so also the

circular, will be of no effect with regard to initiation of criminal proceedings against them.

Counsel for petitioners submits that once the departmental remedy is available under statute, which has attained finality and the assessee was required to deposit Rs.83/- which has not been properly appreciated and looked into by learned trial Judge while taking decision as to whether in the facts of instant case, the prosecution is contemplated or not and once there was circular issued by the department holding that whenever there is evasion of tax which is less than Rs.10,000/-, the prosecution is not required to be instituted against them. Thus, without taking proper care of reference made by petitioners in their application u/s.245(2) Cr.P.C., learned trial Judge has committed a manifest error in rejecting their application and taking cognizance against them under order impugned. In support of his submission, counsel placed reliance upon the judgments of this court in **Laxmi Narayan Sharma Vs. Superintendent, Central Excise & Custom, Jaipur [Tax World (32) P.263]** and so also of apex court in **K.C. Builders Vs. Assistant Commissioner of Income Tax [(2004) 265 ITR 562]**. On the strength of said judgments, counsel submits that action of taking cognizance and initiating criminal proceedings against petitioners is nothing, but a clear abuse of process of law and is not legally sustainable.

No one appeared on behalf of respondent despite service.

I have considered the submission of counsel for petitioners and perused the order impugned.

This fact remained undisputed that after adjudication and resorting of departmental remedy available under statute, the Assessing Authority in its order dated 28th September, 1998 finally observed that assessee is entitled to deposit the tax liability of Rs.83/- culminating into passing of said order. There is a circular issued by the department dated 26th July, 1980 holding that if there is evasion of tax, which is less than Rs.10,000/-, criminal prosecution against the assessee should not be instituted. Learned trial Judge has given reference of both the orders i.e. order of Assessing Authority and so also of circular, but has recorded finding that it will not be binding upon him so far as initiation of criminal proceedings in the matter is concerned. This court finds that the such finding is not at all legally sustainable.

This court after going through the order finds that to proceed further in the matter against petitioners in pursuance of order dated 16th January, 1999 will be nothing, but a clear abuse of process of law and same deserves to be set aside.

Accordingly, the misc. petition stands allowed. The order dated 16th January, 1999 and criminal proceedings initiated & pending before Spl. Judicial Magistrate [Economic Offence] in Case No.287/87 are hereby quashed and set aside.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.